IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE NINTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

**THE HON'BLE MR JUSTICE K.C. BHANU**

**WRIT PETITION NO : 2264 of 2005**

Between:

Nageswara Service Station, rep., by its Proprietor M.V.Nageswara Rao, s/o M.V.Narasimham,
r/o Door No.5-40-15, 5/7, Brodipet, Guntur.

**..... PETITIONER**

AND

1. The Government of Andhra Pradesh rep., by its

Secretary, Roads and Buildings Department,
Secretariat, Saifabad, Hyderabad.
2 The Collector, Guntur District.
3 The Municipal Corporation of Guntur, rep., by its Commissioner.
4 The Superintending Engineer, R&B Department, Guntur, Guntur District.

**.....RESPONDENTS**

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ, order or direction more particularly one in the nature of writ of mandamus declaring the action of the respondents in proceeding to lay the over bridge across the Kankaragunta Gate, Guntur Town over a length of 466 meters in total detrimental to the property belonging to the petitioner as arbitrary, illegal, unjust, contrary to law, in violation of the fundamental rights guaranteed under Articles 14, 19 and 21 of the Constitution of India and actuated malice in law and issue the consequential direction to the respondents to strictly follow the opinion of the Superintending Engineer, R&B Department, Guntur, who clearly opined that it would be sufficient to have the

length of the over bridge at 406 meters on either side and issue the further consequential direction to the Authorities to ensure that no prejudice is caused to the rights of the petitioner's service station and pass such other order or orders as are deemed fit and proper in the circumstances of the case.

**Counsel for the Petitioner: MR.K.R.PRABHAKAR**

**Counsel for the Respondent Nos.1,2 & 4: GP FOR ROADS & BUILDINGS**

**Counsel for the Respondent No.1: T.S.Venkata Ramana**

**The Court, at the admission stage, made the following :**

**THE HON'BLE MR JUSTICE K.C. BHANU**

**WRIT PETITION NO : 2264 of 2005**

**ORDER:**

This writ petition has been filed for issuance of writ of mandamus declaring the action of the respondents in proceeding to lay the over bridge across the Kankaragunta Gate, Guntur Town, over a length of 466 metres in total, detrimental to the property belonging to the petitioner as arbitrary, illegal and contrary to law and violative of fundamental rights guaranteed under Articles 14, 19 and 21 of the Constitution of India.

2. The petitioner is the owner of the petrol bunk by name and style of Nageswara Service Station. He is an authorized dealer of Bharat Petroleum Corporation Limited. In order to facilitate a bridge over the

Railway Gate at Kankaragunta, the 1st respondent is embarking upon a project to construct a fly over/bridge, which would maximum height of 12 metres at the level crossing and the width is of 75 metres. So as to facilitate proper movement of railway traffic on the track, the State Government and the Municipal authorities have embarked upon building of the over bridge and the height of the bridge will be 12 metres and the width of the bridge will be 75 metres, tapering on one side i.e., the side of the Jute Mill to a lenth of 406 metres and on the other side towards the Collectorate to a length of 466 metres. The construction of the said over bridge would end beyond the petrol bunk of the petitioner. It would in fact, move right up to the 14th Cross Road, Brodipet. It is also pertinent to note that even from the stance of the public convenience, the construction of the over bridge at the said point makes no sense. It is also contextually relevant to point out that the 14th Cross Road is the only road used for the public to move from Hindu College to the Kankaragunta Gate and II Town. By ensuring the intent of the over bridge at this point, there would be total chaos on the over bridge and the whole purpose of constructing an over bridge would stand defeated. As the consequence of the construction of the bridge, persons using the over bridge cannot reach the said petrol bunk unless they break the entire length of the over bridge reach out to the point where they are permitted to take 'U' turn and then return to a point under over bridge from which they will have to take another turn to reach the petrol bunk in short. Without acquiring the land at the petrol bunk, the Government by virtue of the said construction, is making the use and the purpose of the petrol bunk defunct. In short, his right to use and occupation of the petrol bunk is being totally nullified by the construction of the proposed over bridge. In a welfare state, one would expect the Government to act *bona fide* and acquire the said land, then to proceed to construct the over bridge. The action is further actuated by legal *malafides*. However, it may be urgency or importance in the acquisition of a property, due process is a constitutional guarantee under Article 300-A of the Constitution of India. When, the statutory authority

goes in the manner contrary to the parameters of the power vested in it, the action becomes arbitrary and it goes beyond the guarantees of fair play and procedural safeguards. It manifests the evil of arbitrariness in the instant case and therefore, it is violation of Article 14 of the Constitution of India. Since the land in question has been a source of livelihood of the petitioner, depriving his source of income is violative of fundamental rights guaranteed in Articles 19 and 21 of the Constitution of India. That there is no objection to the construction of an over bridge, but the existence of the said over bridge has the affect of inhibiting him from using his property. The note file in this regard would reveal that the technical opinion of the authorities was that the length of the over bridge on either side would be fair, if restricted to 406 metres. But for the reasons best known to the authorities, it was extended to another 60 metres on the side of the Petrol bunk. Hence, the present writ petition.

3. The fourth respondent-Superintending Engineer, Roads and Buildings Department, filed a counter affidavit stating that the Government of Andhra Pradesh accorded Administrative approval for Rs.940 lakhs for construction of Road Over Bridge at Kankaragunta Gate in Guntur Municipal Corporation limits at L.C.No.313 at Railway Km.1/31-33 of Guntur-Donakonda Section in Guntur District for development of the Guntur town to regulate the heavy traffic. Technical sanction was given vide letter dated 15.12.2003 and the work was entrusted to the lowest tenderer and the site was handed over to the contractor on 01.07.2004 to complete the work within a period of 18 months. Based on the approved designs and drawings, the contractor has started the work on Jute Mill side and completed non-vented portion on Jute Mill side. On Collectorate side, left side retaining walls of non-vented portion completed and the work is in progress. The contractor has procured the materials so as to complete the project within the agreed period. The necessity of the over bridge is clearly explained in the report accompanying estimate stating that the Railway line from Guntur to Hyderabad has become very busy

and having number of express trains and goods trains plying at present. Frequent closure of the gates on level crossing are causing very much difficulty for the vehicular traffic from vast residential area as well as office complexes such as Collectorate, Engineering Offices, Police Offices etc. The Over Bridge is proposed to construct as follows, keeping in view of the technical aspects:

4. Collectorate side : 466.384 metres.

1. Jute Mill side : 406.384 metres.

The existing level of the Railway Track is +10.21 metres and the road crust level approved by the Railway authorities is +19.006 metres. The existing ground level on collectroate side is +8.285 metres and on the Jute Mill side is +9.825 metres and the ground level on Jute Mill side is in higher level of 1.54 metres than the Collectorate side. The differential length of 60 metres between two sides is due to difference in ground level of 1.54 metres only. The railway authorities have also approved the above design keeping the height of the over bridge proper to be constructed by the Railways. The proposal for slight deviation of the above design by the Superintending Engineer, R & B Circle, Guntur for reducing the length of approach on Collector Office side to 430 metres explaining the reasons for smooth passing of vehicular traffic coming from the 14$^{th}$ cross road submitted to the Managing Director, A.P.R.D.C. and Engineer-in-Chief (R&B) Administration & NABARD, Hyderabad, who is the highest Technical sanctioning authority of the department has not agreed as it involves Railways concurrence and instructed the Superintending Engineer (R&B) Guntur, to follow the original proposals. The owner of the petrol bunk (petitioner) will not sustain any loss due to construction of the Over Bridge up to 466.384 metres towards Collectorate side, and service roads will be formed either sides of the Over Bridge for passage of the vehicles to take Oils in the petrol bunk and there will not be any problem to the traffic also passing through the Railway Gate at 14$^{th}$ cross road. No land of the petitioner's petrol bunk was acquired for construction of the Over Bridge and there is no loss to the petitioner and no livelihood will be deprived, as there are so many approaches to the petitioner petrol bunk and a service road will be formed between the bridge and the petrol bunk along with the bridge. With a *malafide* intention to

stop the construction of the Over bridge, to safeguard the personal interest of the petitioner and detriment to the developmental activities of the Government, the petitioner has filed this writ petition. No prejudice is caused to the petitioner's service station. The Department has not encroached or occupied any land held by the petitioner and hence the writ petition is liable to be dismissed.

4. The reply affidavit has been filed by the petitioner stating that the Superintending Engineer, who is admittedly an expert on the subject, has addressed a letter to the Managing Director, A.P. Roads Development Corporation to reduce the length of approach on Collectorate side for 430 metres for smooth passing of vehicular traffic coming from the 14th cross road. The reasoning given by the Engineer-in-Chief, Roads and Buildings, in not accepting the said proposal is wholly untenable because it is stated that the concurrence from the railways is required. It is further stated that the effective use of his land would suffer substantially by construction of the Over Bridge, thereby, depriving his property rights. Hence, he prays to allow the writ petition.

5. The learned senior counsel for the petitioner contended that there is no fair play and justification on the part of the respondents in extending approach road on Collectorate side beyond 406 metres and from the center point of the bridge, the length of approach road on either side should be equal. But, admittedly, in this case, one side length is 406 metres. Thereby, depriving the use of property rights, such as right to possess the property includes the rights to use the same. He further contended that any action on the part of the Government which inhabits the use of property has the effect of taking away the right to property. He further contended that the 4th respondent-Superintending Engineer, Roads and Buildings Department, Guntur, sent a proposal for slight deviation of reducing

the length of approach on Collectorate side to 430 metres, explaining the reasons for smooth passing of vehicular traffic coming from the 14th cross road. But, the same was not accorded by the Engineer-in-Chief (Roads and Buildings) Administration & NABARD, Hyderabad on the flimsy ground that it involves Railways concurrence and hence he prays to allow the writ petition, directing the respondents to restrict the approach roads towards Collectorate side to the extent of 406 metres.

6. On the other hand, the learned Government Pleader for Transport, Roads and Buildings contended that the Government after considering the matter in a high level committee, accorded administrative approval for construction of the over bridge and handed over the contract work to the lowest tenderer. The site of the petitioner has not been acquired and there is no need for acquisition of any site and on either sides, service road will be provided for the use of residence of that locality and from that service road, one can go to the petrol bunk of the petitioner depending on the ground level on either side of the over bridge, and the length of the approach road has been fixed by the technical authorities. The authorities cannot be directed to act contrary to the Government order and therefore, there are no grounds to interfere with the construction of the bridge.

7. As per G.O.Ms.No.186, dated 28-10-2003, the Government examined the proposal of the Managing Director, Road Development Corporation and accorded administrative sanctioning for Rs.940.00 lakhs (Rupees nine hundred and forty lakhs only) for construction of over bridge at Kankaragunta Gate in Guntur Municipal Corporation limits. The necessity for the construction of the proposed over bridge on the level crossing is that the railway line from Guntur-Hyderabad has become very busy where number of express trains and goods plying at present. Frequent closure of the gates on level crossing are causing very much difficulty for the vehiclular traffic from vast residential area as well as office complexes such as collectorate,

engineering offices, police offices etc.,

8. The approaches to the over bridge are proposed for a length of 872.768 metres. 466.384 metres on collectorate side and 406.384 metres on Jute mill side. As per the said G.O, the service roads are proposed for entire length of viaduct portion approaches on either side with 5.5.0 metres carriage way and side drains with similar crust in the embankment.

9. The petitioner is the owner of the petrol bunk by name and style of Nageswara Service Station and is an authorized dealer of Bharat Petroleum Corporation Limited. It is not in dispute that he has been a lessee, permitted to sell the petroleum products for the last 30 years. It is also not in dispute that the petrol bunk of the petitioner has been in operation for over five decades. It is also not in dispute that Article 300-A of the Constitution of India provides that no person shall deprive of his property except by following due process of law. The provisions of the Land Acquisition Act comes into play when the land of private individuals is being acquired by the State Government for public purpose. The grievance of the petitioner is only that because of construction of over bridge would effect of inhibiting him from using this property but no land of the petitioner is acquired in this case. On either side of the road, service roads are proposed for entire length of viaduct portion approaches on either side with 5.5.0 metres carriageway and side drains with similar crust in the embankment.

10. It is not the case of the petitioner that even though laying the service roads, the land of the petitioner has to be encroached into or service roads will pass through the land of the petitioner. The affidavit is silent with regard to the acquisition of any portion of the land of the petitioner either for the purpose of laying service road or for the purpose of constructing the over bridge or approach road. Therefore, the right of the petitioner will not be affected in any manner since the service road is provided by the side of the petrol outlet of the

petitioner. As the approach road towards Collectorate side extends beyond the petrol bunk of the petitioner, it may cause inconvenience to the pubic because the person coming over the bridge has to take 'U' turn at the end of the bridge to go to the petrol bunk of the petitioner. Except that in no manner it would cause inconvenience to the petrol outlet of the petitioner. Since the service road is provided for by the side of the petrol bunk, there is no possibility of petrol bunk being defunct.

11. As rightly contended by the learned counsel for the petitioner, though tapering of approach road from center point of the over bridge may be equal on either side, but, admittedly in this case, the width of the bridge is 75 metres and the tapering towards the side of Jute mill, the length is 406 metres whereas, on other side, the tapering towards Collectorate side is 460 metres. Admittedly, the Superintending Engineer, Roads and Buildings Circle, Guntur sent a proposal for reducing the length of an approach from the Collectorate side is to be fixed at 430 metres, explaining reasons for smooth passing of vehicular traffic coming from the 14$^{th}$ cross road. But the said proposal was not accorded to by the Managing Director, A.P.Roads Development Corporation and Engineer-in-Chief (R&B) Administration & NABARD, Hyderabad, who is the highest Technical sanctioning authority, because it involves concurrence of the railways. The reason given by the respondents with regard to the difference of length on either side is that the existing level of the Railway Track is + 10.21 metres and the road crust level approved by the Railway authorities is + 19.006 metres and that the existing ground level on Collectorate side is + 8.285 metres and on the Jute mill side + 9.825 metres and that the ground level on Jute mill side is in higher level of 1.54 metres than the collectorate side. So, based on the approved R.C.L. of + 19.006 metres and the approach gradients of 1 in 40, the approaches lengths are 466.384 metres on Collectorate side and 406.384 on Jute mill side. The tapering of

approach of road towards Jute mill side is in higher level of 1.54 metres than the Collectorate side. Taking into that aspect, the highest technical sanctioning authority of the department approved the alignment on either side of the bridge. It is for the technical sanctioning authority to take appropriate decision based on all the relevant factors. This Court in exercise of jurisdictional power under Article 226 of the Constitution of India cannot sit in appeal over the decision of the administrative authority. Depending upon the ground level on either side of the over bridge, the approach level has been fixed. The same cannot be shown to be arbitrary exercise of power.

12. It is well settled that the exercise of administrative power will stand vitiated if there is a manifest error of record or the exercise of power is arbitrary. Similarly, if the power has been exercised on the non-consideration or non-application of mind to the relevant factors, the exercise of power will be recorded as manifestly error.

13. In this writ petition, the petitioner seeking writ of mandamus, declaring the action of the respondents in proceeding to lay the over bridge across the Kankaragunta gate as illegal. In this case, the respondents are constructing the over bridge across in the Government land, there is not even any demolition of the properties of the private individuals. The condition precedent of the issue of mandamus is that there is one claiming a legal right for performance of a legal duty, by an authority against whom it is claimed. The order of mandamus is in form of command directing to a person authority requiring him to do a particular thing, wherein specified which appertains to his office or their office and is in the nature of a public duty. The writ in the nature of mandamus is ordinarily issued when the petitioner establishes a legal right in himself and corresponding legal duty in the public authority.

14. It is alleged in the affidavit that without acquiring the land at the petrol bunk, the Government, by virtue of the said construction, is making the use and purpose of petrol bunk defunct and in short his

right to use and occupation of the petrol bunk is totally nullified by the construction of the proposed over bridge, the same is denied in the counter affidavit filed by the 4th respondent stating that no livelihood will be deprived as there are so many approaches to the petitioner's petrol bunk and the service road will be formed between bridge and petrol bunk along with bridge. Therefore, the same is not shown to be false or incorrect. Since the petitioner's business is not at all affected, as there are so many approaches to the petitioner's petrol bunk through service road along with bridge, the right of the petitioner in access to his petrol bunk in no manner affected. Simply because some inconvenience or hardship would be caused to the persons use the railway over bridge in order to go to the petrol bunk have to go up to the end of the approach road and take a 'U' turn to reach the petrol bunk, the same will not confer any right on the part of the petitioner seeking the relief inasmuch as the public convenience is most paramount consideration.

15. As per G.O.No.186, dated 28-10-2003, Transport, Roads & Buildings (R.II) Department, the road over bridge length is fixed at 948 metres with 466.384 metres on Collectorate side and 406.384 metres on Jute Mill side with service roads by the side of approaches with a width of 5.5.0 metres. The Government of Andhra Pradesh after examining the proposals of the Managing Director, Road Development Corporation, accorded administrative sanctioning for construction of railway over bridge at Kankaragunta Gate in Guntur Municipal Corporation, the Managing Director in his T.S.Memo.No.69/2003-2004, dated 15-12-2003, accorded technical sanctioning. The technical sanctioning accorded by the Managing Director, AP Roads Development Corpoation, and the administrative sanctioning given by the State Government is not under challenge. Since the respondents are constructing the over bridge in accordance with the technical sanction and administrative sanction,

the question of issue of mandamus does not arise unless it is shown that the proposed over bridge is being constructed contrary to the technical and administrative sanction issued by the respondents.

16. In the absence of any challenge to the technical sanctioning vide Memo dated 15-12-2003 and administrative sanctioning accorded in G.O.Ms.No.186 Transport, Roads & Buildings (R-II) Department, dated 28-10-2003, I am of the considered opinion that a direction or order as prayed for cannot be given.

17. Therefore, the writ petition is devoid of merit and is accordingly dismissed. No costs.

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March 9, 2005

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To

1 The Government of Andhra Pradesh rep., by its

Secretary, Roads and Buildings Department,
Secretariat, Saifabad, Hyderabad.

2 The Collector, Guntur District.

3 The Commissioner, Municipal Corporation of Guntur.

4 The Superintending Engineer, R&B Department,
Guntur, Guntur District.

5 Two C.D.Copies.

6 Two C.Cs to the GP for Roads and Buildings, High Court

Buildings, Hyderabad (O.U.T.).